FRANK G. WELLS

IBLA 76-600 Decided November 15, 1976

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES 16022.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Generally--Oil and Gas Leases: Acquired Lands--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Future and Fractional Interest Leases

   An oil and gas lease offer for acquired lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. An offer which is defective for failure to comply with this mandatory regulation must be rejected.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Generally-- Oil and Gas Leases: Future and Fractional Interest Leases

   An oil and gas lease offer for lands in which the United States owns a fractional mineral interest must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States. If an agent signs such statement, rather than

the offeror, the regulations require that evidence be filed of the authority of the agent to sign the statement. The agent's signature will be acceptable only if the authorization meets the specifications of the regulations.

3. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Future and Fractional Interests

An oil and gas lease offer for lands in which the United States owns a fractional mineral interest which is not accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States is defective and such defect cannot be cured by the submission of further information.

4. Rules of Practice: Appeals: Hearings

Where applicant alleges facts which, even if proven to be true, would not change the legal conclusion of the case, a request for a hearing will be denied.

APPEARANCES: Don M. Fedric, Esq., Hunker-Fedric, P.A., Roswell, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Frank G. Wells appeals from a decision of the Eastern States Office, Bureau of Land Management, dated April 1, 1976, rejecting his noncompetitive acquired lands oil and gas lease offer ES 16022 filed as a drawing entry card for parcel No. 9, List No. 76-1, which was posted as available for the simultaneous filing of oil and gas lease offers on January 19, 1976. The basis for the decision was that the United States owns only a fractional mineral interest in the oil and gas in the parcel and the offeror failed to provide a statement required by regulation showing his ownership of operating rights to the fractional mineral interest not owned by the United States.

Appellant's offer was drawn first in the simultaneous filing. The offers of W. J. Langley and Arthur Hagan received second and third priority, respectively. On February 20, 1976, appellant paid his first year's rental. On March 4, 1976, Hagan filed a protest against issuance of an oil and gas lease to either the first or

second drawee based upon the alleged failure by either applicant to submit the statement relating to fractional interests required by 43 CFR 3130.4-4. In its decision, the Eastern States Office sustained Hagan's protest.

In his statement of reasons, appellant states that according to the sworn testimony of his agent, Peter Hummel, the required statement was contained in a letter of transmittal submitted with the entry card. Appellant suggests that it would be reasonable to find that the letter was discarded by the Eastern States Office during a busy filing week, as an unimportant letter of transmittal.

Appellant further recites that on February 11, 1976, the required rental was paid accompanied by a letter of transmittal signed by appellant which contained a statement somewhat similar to the statement required under the regulation, though showing that the remaining 25 percent interest in the lands was unleased and owned by the State of Florida. Appellant explains that this statement was sent as a precautionary measure in the event some regulation required the naming of the other fractional interest owner. A previous regulation had required this information. He wishes to dissuade the Board from the presumption raised by the Eastern States' decision that sending this statement creates a presumption that the original statement was not submitted with the card.

Next, appellant urges that the only purpose in the regulation is the protection of the Government where the issuance of a fractional lease of less than 50 percent is presumed to be contrary to public interest, although time and experience have shown that such presumption serves no useful purpose. Therefore, appellant contends that, considering the intent of the regulation, it is irrelevant that the statement was filed by his agent instead of himself.

[1] This Board has repeatedly emphasized that the requirement in 43 CFR 3130.4-4 is mandatory. Where the United States owns only a fractional mineral interest in the land, the offeror must accompany the offer with a statement showing the extent of the offeror's ownership of the operating rights in the fractional mineral interest not owned by the United States. Where there is no such accompanying statement, the offer must be rejected. Thelma Wright, 27 IBLA 198 (1976); Grady Argenbright, 27 IBLA 24 (1976); Michael Shearn, 24 IBLA 259 (1976).

[2] Even if the required statement had been submitted with the drawing entry card, appellant's offer would still have been deficient.

If an agent signs the required document in behalf of the offeror, 43 CFR 3102.6-1 requires that evidence must be file

of the authority of the agent to sign the document. See Robert C. Leary, 27 IBLA 296 (1976). The signature of an agent instead of the offeror will be acceptable only if the authorization meets the specifications of 43 CFR 3102.6-1(3):

> If the power of attorney specifically limits the authority of the attorney in fact to file offers to lease for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney-in-fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required, by the Acts and the regulations, and the principal agrees therein to be bound by such representations of the attorney-in-fact and waives any and all defenses which may be available to the principal to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney-in-fact will be acceptable as compliance with the provisions of the regulations.

No such information was contained in the letter of transmittal accompanying appellant's drawing entry card, nor was there any reference to a previous filing of such information. See 3102.6-1(a).

[3] Appellant's contention that he satisfied the requirement by submitting a statement with his rental payment to the effect that he does not own any mineral interest in the 25 percent owned by the State of Florida, is to no avail.

Under the simultaneous filing procedure an applicant may not "cure" the defects in his offer by the submission of additional information after the drawing. James D. Caddell, 25 IBLA 274 (1976); Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974). 1/

We note that the signature was mechanically impressed on the drawing entry card. The ramifications of such a signature are fully discussed in Evelyn Chambers, 27 IBLA 317 (1976), and Robert C. Leary, supra. Since the disposition of this case is based on other grounds, we need not explore the facsimile signature issue.

1/ Aff'd sub nom. B.E.S.T. Inc. v. Morton, Civ. No. 75-060 (D.N.M., filed August 19, 1975), appeal pending.

[4] Appellant requests a hearing pursuant to 43 CFR 4.415 in order to allow appellant the opportunity to present evidence and testimony of witnesses to factually establish appellant's compliance with 43 CFR 3130.4-4. As we have said, even if appellant could prove that the required statement did accompany the offer, this would not help his case, because it was signed by his agent without the proper authorization included. Therefore, appellant has not alleged facts which, if proven to be true, would show that he complied with the regulations. Since the file contains all the information necessary for the legal conclusions made herein, no useful purpose would be served by a hearing. Starling Brokers, 6 IBLA 237, 239-240 (1972).

We are mindful of the amendment to the pertinent regulation, 43 CFR 3130.4-4, published as Circular 2406 in 41 F.R. 43149 (September 30, 1976), which deleted the requirement that offerors must submit a statement as to their ownership in the operating rights to the nonfederal oil and gas in the land sought under Federal lease. We are also aware that the Department has, in the past, permitted appellants who failed to meet mandatory requirements of the regulations to take advantage of amendments to the regulations effected during the pendency of the appeals whereby the deficiency in the application was eliminated. But we are not aware of any case where such latitude has been granted to any appellant where such action would adversely affect or be in derogation of the rights of another party who has complied with the regulation in effect at the time of filing of the applications. The rejection of the appellant's drawing entry card in this case must stand.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eastern States Office is affirmed.

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Douglas E. Henriques
Administrative Judge

We concur:

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Newton Frishberg
Chief Administrative Judge

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Martin Ritvo
Administrative Judge